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U.S. COURTS
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CAMERON S. BURKE
IDAHO

Attorney for Debtors

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

In re:

HIPWELL, TERRY,

Debtor.

Case No. 96-02095

OBJECTION TO CLAIM
AND NOTICE OF HEARING

COMES NOW Debtor, Terry Hipwell, and objects to the claim of Landview Fertilizer on the grounds set forth therein:

1) That on December 18, 1996 Landview Fertilizer filed a secured claim in the amount of \$176,759.80.

2) That Landview has filed a number of liens on both real and personal property, but all such liens are junior liens and the liquidation analysis of the Debtor reflects that Landview's claim has little or no secured value. That analysis reflects:

A. As to the Debtor's real property:

1. A Lien on Debtor's Canyon County property which was appraised for and is listed in his schedules as a residence & Land in Canyon County @ a value of \$339,000 less a 26%

OBJECTION TO CLAIM - 1

liquidation cost = \$251,082. Travelers holds a first mortgage position on this property of \$480,030, followed by the State of Idaho Tax Commission in the sum of \$985, followed by the Canyon county assessor in the sum of \$12,470 and followed by Land View's claim of \$176,759.80. There is not sufficient equity to pay any sum to Land View and it is not, therefore secured in the Canyon county land and improvements.

2. As to Debtor's Payette property Land View has claimed a security interest in the same but has failed to perfect its interest by filing its mortgage until January 8, 1997 in violation of the automatic stay existing under 11 U.S.C. 362. As a consequence Land View has not security interest in the Payette County land and improvements.

B. EQUIPMENT

As to the Debtor's equipment: as set forth in the liquidation analysis accompanying the Debtor's Chapter 12 Plan reflect that Land View's claims are junior to claims of other creditors in that equipment and therefor Land View has no perfected, security interest in that equipment.

C. Crops

I. As to Land View claim to a secured claim against the Debtor's 1995 sugar beet crops and 1996 wheat crop, Land View in filing its proof of claim, a copy of which is attached hereto, marked Exhibit "1" and by this reference incorporated herein

as if fully set forth, has failed to comply with the provisions of 11 U.S.C. 501 (a) and 502 as those sections are implemented by rule 3001 Fed. R. Bankr. P. In that the claim contains no evidence of any perfected security interest in the said crops. In order to participate in the Debtor's Plan a creditor is required to file a claim, substantially complying with the requirements of Official Form 10 (rule 9009 Fed. R. Bankr. P). Item 4 of Official Form 10 requires a creditor claiming a secured claim to "attach evidence of perfection of security interest". In addition item 7 of Official form 10 requires a creditor claiming a secured claim to "Attach copies of supporting documents, such as *** evidence of security interest to original and each copy".

This creditor as failed to comply with the statutory and bankruptcy rule requirements and is not entitled therefore to participate as a secured creditor in these crops. (In re White 168 Bankr. 825, 1994 Bankr. LEXIS 925 (June 23, 1994,) AND (In re Hasse 92 IBCR 17)

2. Land View claims a security interest in the debtor's 1995 Sugar Beet Crop and 1996 wheat Crop.

A. AS TO THE 1995 SUGAR BEET CROP

The Debtor grew crops in Owyhee and Payette counties.

The beet crops in both counties, subject to the failure to file a proper secured claim as set forth above, are claimed as perfected and secured by Land View. As to the Payette crop Land View subordinated to TASCO in excess of what the crop yielded and there is no security interest in that crop.

As to the Payette crop, Land View likewise subordinated its interest to TASCO to

the extent of \$460 per acre. The crop procured in excess of that sum and was sold as was the practice between Land View and the debtor, without the written permission of Land View. The proceeds of that sale were paid directly to the Trustee, are held by TASC0 under a claim of set-off or are held by Land View. The sale of a farm crop pursuant to the standard practice perfects an interest in the "proceeds" only if they are received by the debtor. (Easter Idaho Production Credit v. Idaho Gem, Inc. 842 P. 2d 282, 122 I 946 , 1992). The debtor has not these proceeds directly.

B. AS 1996 WHEAT CROP

The 1996 wheat crop is likewise sold and the trustee has received \$. These proceeds have been paid to the trustee, and not the debtor, or are held by third parties subject to the trustees demand they be turned over to him

C. Cash Collateral Order

This court has entered int cash collateral order on October 24, 1996 ,after notice and hearing and without objection by Land View. The court has authorized the expenditure of \$11,556.02 plus 12% interest to Reed Grain and Bean, Inc. And the sum of \$19,990.00 to the debtor for living expenses for 90 days. If Land View is found to have a continuing , security interest in the proceeds of the sale of debtor's 1996 wheat crop it must be net of the cash collateral funds and other administrative costs and expenses.

TO: Ronald D. Schoen, United States Trustee, and Landview Fertilizer:

PLEASE TAKE NOTICE that the Debtor will call up for hearing its Objection to Claim on the 4th day of March, 1997 at the hour of 9:30a.m. at the United States

OBJECTION TO CLAIM - 4

Bankrupt Court, 550 W. Fort Street, 5th Floor, before the Honorable Jim D. Pappas or
as soon thereafter as counsel may be heard.

DATED this 31st day of January, 1997.


Howard R. Foley

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of January, 1997, I caused to be
served a true and correct copy of the foregoing Objection to Claim and Notice of
Hearing by the method indicated below, and addressed to the following:

Office of the U.S. Trustee
P.O. Box 32
Boise, ID 83707

☒ Mailed
☐ FAXED
☐ Hand-delivered

United States Trustee
Ronald D. Schoen
P.O. Box 216
Payette, ID 83661

☒ Mailed
☐ FAXED
☐ Hand-Delivered

John Harrington
P.O. Box 247
Nampa, ID 83653-0247

☒ Mailed
☐ FAXED
☐ Hand-delivered


Howard R. Foley